

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 MARIA A. GUTIERREZ,) NO. SA CV 15-1439-E
12 Plaintiff,)
13 v.) MEMORANDUM OPINION
14 COMMISSIONER OF SOCIAL) AND ORDER OF REMAND
15 SECURITY ADMINISTRATION,)
16 Defendant.)
17

18 Pursuant to sentence four of 42 U.S.C. section 405(g), IT IS
19 HEREBY ORDERED that Plaintiff's and Defendant's motions for summary
20 judgment are denied, and this matter is remanded for further
21 administrative action consistent with this Opinion.
22

23 PROCEEDINGS
24

25 Plaintiff filed a complaint on September 8, 2015, seeking review
26 of the Commissioner's denial of benefits. The parties consented to
27 proceed before a United States Magistrate Judge on September 24, 2015.
28 Plaintiff filed a motion for summary judgment on February 10, 2016.

1 Defendant filed a motion for summary judgment on March 11, 2016. The
2 Court has taken the motions under submission without oral argument.
3 See L.R. 7-15; "Order," filed September 10, 2015.

4
5 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**
6

7 Plaintiff asserts disability since February 23, 2012, based
8 primarily on alleged neck pain (Administrative Record ("A.R.") 20-274,
9 282-367). Dr. Roxana P. Minkus, an osteopath, opined that Plaintiff
10 cannot sit, stand or walk more than a combined four hours per work day
11 and likely would be absent from work more than three times per month
12 (A.R. 351-52).

13
14 The Administrative Law Judge ("ALJ") found Plaintiff has severe
15 "degenerative disc disease of the cervical spine," but retains the
16 residual functional capacity to perform Plaintiff's past relevant work
17 as tour guide (A.R. 23, 25, 31). Contrary to Dr. Minkus' opinion, the
18 ALJ concluded Plaintiff "can sit eight hours out of an eight-hour day;
19 she can stand or walk eight-hours out of an eight-hour day, with
20 normal breaks . . ." (A.R. 25). The ALJ acknowledged that Dr. Minkus
21 is Plaintiff's "treating physician," but gave "Dr. Minkus' opinion
22 little weight because it is not consistent with the medical evidence
23 record as a whole [and] . . . Dr. Minkus is not familiar with the
24 Social Security Administration's precise disability guidelines" (A.R.
25 30-31). The Appeals Council denied review (A.R. 1-4).

26 ///

27 ///

28 ///

STANDARD OF REVIEW

Under 42 U.S.C. section 405(g), this Court reviews the Administration's decision to determine if: (1) the Administration's findings are supported by substantial evidence; and (2) the Administration used correct legal standards. See Carmickle v. Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue, 499 F.3d 1071, 1074 (9th Cir. 2007); see also Brewes v. Commissioner, 682 F.3d 1157, 1161 (9th Cir. 2012). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971) (citation and quotations omitted); see also Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006).

If the evidence can support either outcome, the court may not substitute its judgment for that of the ALJ. But the Commissioner's decision cannot be affirmed simply by isolating a specific quantum of supporting evidence. Rather, a court must consider the record as a whole, weighing both evidence that supports and evidence that detracts from the [administrative] conclusion.

Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citations and quotations omitted).

///

///

///

///

DISCUSSION

I. The ALJ Failed to State Sufficient Reasons for Rejecting the Opinions of Dr. Minkus.

A treating physician's conclusions "must be given substantial weight." Embrey v. Bowen, 849 F.2d 418, 422 (9th Cir. 1988); see Rodriguez v. Bowen, 876 F.2d 759, 762 (9th Cir. 1989) ("the ALJ must give sufficient weight to the subjective aspects of a doctor's opinion. . . . This is especially true when the opinion is that of a treating physician") (citation omitted); see also Garrison v. Colvin, 759 F.3d 995, 1012 (9th Cir. 2014) (discussing deference owed to the opinions of treating and examining physicians). An osteopath qualifies as a treating physician. See, e.g., Sutherland v. Barnhart, 322 F. Supp. 2d 282, 291 (E.D.N.Y. 2004); Berry v. Secretary, 1986 WL 14600, at *4 (E.D.N.Y. December 11, 1986); see also 20 C.F.R. § 404.1513(a)(1). Even where the treating physician's opinions are contradicted, as here, "if the ALJ wishes to disregard the opinion[s] of the treating physician he . . . must make findings setting forth specific, legitimate reasons for doing so that are based on substantial evidence in the record." Winans v. Bowen, 853 F.2d 643, 647 (9th Cir. 1987) (citation, quotations and brackets omitted); see Rodriguez v. Bowen, 876 F.2d at 762 ("The ALJ may disregard the treating physician's opinion, but only by setting forth specific, legitimate reasons for doing so, and this decision must itself be based on substantial evidence") (citation and quotations omitted).

///

///

1 The reasons the ALJ stated for rejecting Dr. Minkus' opinions do
2 not comport with these authorities. The ALJ's stated reason that Dr.
3 Minkus' opinions purportedly are "not consistent with the medical
4 evidence record as a whole" is impermissibly vague and unspecific.
5 See, e.g., Kinzer v. Colvin, 567 Fed. App'x 529, 530 (9th Cir. 2014)
6 (ALJ's statements that treating physicians' opinions "contrasted
7 sharply with the other evidence of record" and were "not well
8 supported by the . . . other objective findings in the case record"
9 held insufficient); McAllister v. Sullivan, 888 F.2d 599, 602 (9th
10 Cir. 1989) ("broad and vague" reasons for rejecting treating
11 physician's opinions do not suffice); Embrey v. Bowen, 849 F.2d at 421
12 ("To say that the medical opinions are not supported by sufficient
13 objective findings or are contrary to the preponderant conclusions
14 mandated by the objective findings does not achieve the level of
15 specificity our prior cases have required. . . ."). The ALJ's only
16 further stated reason is that, according to the ALJ, "Dr. Minkus is
17 not familiar with the Social Security Administration's precise
18 disability guidelines." This stated reason is factually unsupported
19 and logically irrelevant. The record contains no substantial evidence
20 regarding Dr. Minkus' familiarity or unfamiliarity with the
21 Administration's "precise disability guidelines." More fundamentally,
22 even total ignorance of the law would have no logical impact on the
23 validity of Dr. Minkus' opinions regarding Plaintiff's functional
24 abilities, such as Plaintiff's tolerances for sitting, standing and
25 walking. See Shoaf v. Colvin, 2015 WL 9455558, at *5 (C.D. Cal.
26 Dec. 23, 2015) (finding insufficient the ALJ's stated reason that the
27 treating physician was "not familiar with the Social Security
28 Administration's precise disability guidelines"); see also Beech v.

1 Colvin, 2014 WL 2931177, at *7 (C.D. Cal. June 26, 2014) ("a
2 demonstration of familiarity with Social Security disability
3 guidelines by [the treating physician] does not appear to be a
4 prerequisite to the ALJ's consideration of [the treating physician's]
5 opinion. Indeed, the regulations require that the ALJ consider the
6 opinions of all physicians. See 20 C.F.R. §§ 404.1527(c),
7 416.927(c)").

8
9 In defending the ALJ's rejection of Dr. Minkus' opinions,
10 Defendant argues that "Dr. Minkus' assessment clearly reflected
11 Plaintiff's own description of her limitations, rather than
12 limitations Dr. Minkus independently assessed" (Defendant's Motion at
13 9). It is true that an ALJ sometimes may reject a treating
14 physician's opinion where the physician premised the opinion "to a
15 large extent" on the claimant's properly discounted subjective
16 complaints. See Morgan v. Commissioner, 169 F.3d 595, 602 (9th Cir.
17 1999); accord Mattox v. Commissioner of Social Security, 371 Fed.
18 App'x 740, 742 (9th Cir. 2010); Fair v. Bowen, 885 F.2d 597, 605 (9th
19 Cir. 1989); compare Ghanim v. Colvin, 763 F.3d 1154, 1162-63 (9th Cir.
20 2014) ("when a [treating physician's] opinion is not more heavily
21 based on a patient's self-reports than on clinical observations," an
22 ALJ discounting of the treating physician's opinion based on the
23 patient's lack of credibility is impermissible). It is also true,
24 however, that a court "cannot affirm the decision of an agency on a
25 ground that the agency did not invoke in making its decision." Pinto
26 v. Massanari, 249 F.3d 840, 847 (9th Cir. 2001). In the present case,
27 the ALJ did not invoke as a stated reason for rejecting Dr. Minkus'
28 opinions the possibility that Dr. Minkus premised those opinions more

1 heavily on Plaintiff's subjective complaints than on clinical
 2 observations. The Court cannot uphold the ALJ's rejection of Dr.
 3 Minkus' opinions on the basis of unstated reasoning. See id.; Ryan v.
 4 Colvin, 2015 WL 1964377, at *6 n.2 (E.D. Wash. May 1, 2015); Cooper v.
 5 Colvin, 2014 WL 50810, at *12 (S.D. Cal. Jan. 7, 2014).¹

6
 7 **II. Remand for Further Administrative Proceedings is Appropriate.**

8
 9 Remand is appropriate because the circumstances of this case
 10 suggest that further administrative review could remedy the ALJ's
 11 errors. McLeod v. Astrue, 640 F.3d 881, 888 (9th Cir. 2010); see also
 12 INS v. Ventura, 537 U.S. 12, 16 (2002) (upon reversal of an
 13 administrative determination, the proper course is remand for
 14 additional agency investigation or explanation, except in rare
 15 circumstances); Dominquez v. Colvin, 808 F.3d 403, 407 (9th Cir. 2015)
 16 ("Unless the district court concludes that further administrative
 17 proceedings would serve no useful purpose, it may not remand with a
 18 direction to provide benefits"); Treichler v. Commissioner, 775 F.3d
 19 1090, 1101 n.5 (9th Cir. 2014) (remand for further administrative
 20 proceedings is the proper remedy "in all but the rarest cases");
 21 Garrison v. Colvin, 759 F.3d at 1020 (court will credit-as-true
 22 medical opinion evidence only where, inter alia, "the record has been
 23 fully developed and further administrative proceedings would serve no

24
 25 ¹ The actual bases for Dr. Minkus' opinions may require
 26 clarification on remand. Dr. Minkus' "Medical Assessment, etc."
 27 references Plaintiff's subjective complaints and an MRI report
 28 (A.R. 352). The "Medical Assessment, etc." also recites: "By my
 signature below, I affirm the foregoing assessment is based upon
 my objective findings and not only on the individuals' [sic]
 subjective comments" (A.R. 352).

1 useful purpose"); Harman v. Apfel, 211 F.3d 1172, 1180-81 (9th Cir.),
2 cert. denied, 531 U.S. 1038 (2000) (remand for further proceedings
3 rather than for the immediate payment of benefits is appropriate where
4 there are "sufficient unanswered questions in the record"). There
5 remain significant unanswered questions in the present record. Cf.
6 Marsh v. Colvin, 792 F.3d 1170, 1173 (9th Cir. 2015) (remanding for
7 further administrative proceedings to allow the ALJ to "comment on"
8 the treating physician's opinion). Moreover, it is not clear that the
9 ALJ would be required to find Plaintiff disabled for the entire
10 claimed period of disability even if the rejected medical opinions
11 were fully credited. See Luna v. Astrue, 623 F.3d 1032, 1035 (9th
12 Cir. 2010).

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **CONCLUSION**

2
3 For all of the foregoing reasons,² Plaintiff's and Defendant's
4 motions for summary judgment are denied and this matter is remanded
5 for further administrative action consistent with this Opinion.
6

7 LET JUDGMENT BE ENTERED ACCORDINGLY.
8

9 DATED: April 1, 2016.
10

11 /s/
12 CHARLES F. EICK
13 UNITED STATES MAGISTRATE JUDGE
14
15
16
17
18
19
20
21
22
23
24

25 ² The Court has not reached any other issue raised by
26 Plaintiff except insofar as to determine that reversal with a
27 directive for the immediate payment of benefits would not be
28 appropriate at this time. "[E]valuation of the record as a whole
creates serious doubt that [Plaintiff] is in fact disabled."
Garrison v. Colvin, 759 F.3d at 1021.